

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Program Manager
BSA Policy & Operations
(Small Business/Self-Employed)

from: Stuart D. Murray
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(Procedure & Administration)

subject: Form 8300 Reporting of Bank Deposits that Are Payments on Used Auto Sales

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. Whether a deposit into a used car dealer's bank account by one of the dealer's independent contractors as payment on a car sale is reportable by the dealer on Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, when the deposit includes cash (meaning currency) and a cashier's check, each of which is less than \$10,000 but together total more than \$10,000.
2. Whether the conclusion to Issue 1 is in any way altered by the reporting requirements pertaining to FINCEN Form 104, *Currency Transaction Report* (formerly Treasury Form 4789).

CONCLUSIONS

1. The deposit is not reportable on Form 8300 because a deposit into the dealer's bank account is not the receipt of a cash payment for purposes of the I.R.C. § 60501 reporting requirements.
2. The conclusion to Issue 1 is not affected by the reporting requirements pertaining to CTRs, regardless of whether they apply, although they do not appear to apply here.

FACTS

The two issues addressed herein are based on the following non-taxpayer-specific scenario. Taxpayer (in the general sense of an individual or entity subject to liability for failure to file a required information return) is a Schedule C sole proprietorship that sells used motor vehicles. Individual A, an independent contractor of the Taxpayer, sells Taxpayer's vehicles exclusively. Individual A receives a commission for every vehicle sold.

Taxpayer purchases most of Taxpayer's inventory of vehicles through auctions. Individual A buys his inventory at auction as well, making the purchases under the Taxpayer's dealer's license. Individual A then sells the vehicles to customers at a price in excess of what was paid at auction. The Taxpayer weekly pays for all the vehicles purchased through the auctions with a business check, including all vehicles purchased by Individual A. Taxpayer keeps track of all vehicles Individual A buys and sells and also creates a list, by month, of the amounts owing from Individual A for the cars Individual A purchased using the Taxpayer's dealer's license. All of Individual A's retail sales in a year are reported on Schedule C of the Taxpayer's income tax return for the year, and the Taxpayer pays all sales taxes.

Individual A sells one of the cars purchased at auction to a retail customer for \$11,000. After deducting his commission (\$500), Individual A pays Taxpayer \$10,500.¹ By way of payment, Individual A deposits \$6,000 in cash (United States currency) and a \$4,500 cashier's check into Taxpayer's business bank account.

LAW AND ANALYSIS

Issue 1

Section 60501(a) provides that any person who is engaged in a trade or business, and who, in the course of that trade or business, "receives" more than \$10,000 in cash in one transaction (or two or more related transactions), shall make the return described in

¹ Presumably, the Taxpayer is making a profit on the transaction (for example, the auction price was \$8,000, in which case, Taxpayer has netted \$2,500, minus any costs related to the transaction).

section 6050I(b) with respect to the transaction (or related transactions) at the time the Secretary prescribes. Section 6050I(b) requires the information return to be made on whatever form is prescribed for this purpose. Form 8300 is the designated form.

A “recipient” of cash for purposes of section 6050I reporting means “the person receiving the cash.” Treas. Reg. § 1.6050I-1(c)(8)(i). On prior occasions we have opined that a person’s deposit into someone else’s bank account is not *receipt* by the accountholder of a payment within section 6050I. While the contexts were somewhat different from the current one, and the prior advice is certainly not precedential (just as this advice is not precedent) or determinative of what we decide now, our analysis here does not lead to a different outcome. We construe the word “receives” in section 6050I(a) to mean actual, physical receipt. In that sense, the Taxpayer in your scenario does not “receive” a \$10,500 payment. The Taxpayer does not physically (in hand) receive the money that Individual A deposits into the Taxpayer’s bank account. Consequently, we conclude that the deposit—even though it exceeds \$10,000 and the transaction on which it is being paid was conducted in the course of the Taxpayer’s trade or business—is not a reportable payment under section 6050I.²

Issue 2

Even where a payment falls within section 6050I(a), section 6050I(c)(1)(A) sets forth a specific exception to avoid double reporting. Namely, cash received in a transaction that is reported by any financial institution to Treasury under the Bank Secrecy Act’s reporting and recordkeeping requirements in Title 31 is excluded from section 6050I reporting where it would be duplicative of the BSA reporting. Additionally, a bank or other financial institution is not required to file a Form 8300 reporting the receipt of cash exceeding \$10,000. I.R.C. § 6050I(c)(1)(B); Treas. Reg. § 1.6050I-1(d)(1).

Section 5313 of Title 31 governs the circumstances under which financial institutions, including banks, are required to report monetary transactions. Section 5313(a) states that when “a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation,” the

² Given that, it is irrelevant, and we need not decide, whether more than \$10,000 in “cash” is present, i.e., whether the \$4,500 cashier’s check is “cash.” See Treas. Reg. § 1.6050I-1(c)(7)(i) (defining “cash” as (A) the coin and currency of the United States or of any other country if circulated and customarily used and accepted as money in the issuing country, and (B) a cashier’s check, bank draft, traveler’s check, or money order having a face amount of not more than \$10,000 received in a “designated reporting transaction” or in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid the reporting requirements of section 6050I). Please note that we are *not* deciding here that if Individual A made the payment (\$6,000 in cash, and \$4,500 in a cashier’s check) directly to the Taxpayer—which unquestionably would be receipt under section 6050I—the payment would, or would not, be reportable on Form 8300. The answer would depend on whether the payment is received in a “designated reporting transaction” or one in which the Taxpayer knows that the split form of payment is an attempt to avoid Form 8300 reporting.

financial institution must file a report as the Secretary directs. Per the implementing regulations, financial institutions, other than casinos, must generally file a report of each deposit of "currency" of more than \$10,000. 31 C.F.R. § 103.22(b)(1).

"Currency" is defined as the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance, and includes U.S. silver certificates, U.S. notes and Federal Reserve notes, and official foreign bank notes customarily used and accepted as a medium of exchange in a foreign country. 31 C.F.R. 103.11(h). "Monetary instruments," which are defined separately, include not only currency but all negotiable instruments, including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes under the UCC, and money orders. 31 C.F.R. 103.11(u)(1).

Because a cashier's check is not currency and Individual A's deposit into the Taxpayer's bank account is of less than \$10,000 in currency, then, as we read the Title 31 requirements, the bank would not be obligated to file a CTR. In any event, the applicability or inapplicability of these requirements has no effect on our conclusion that a Form 8300 is not required from the Taxpayer. A payment that is otherwise reportable under section 6050I is excepted from Form 8300 reporting if a CTR is required for the transaction. But we have determined that the deposit is not reportable under section 6050I for other reasons.

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Please call 622-4910 if you have any further questions.